86 - 1320

CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

SWIFT TEXTILES, INC.,

Petitioner,

v.

WATKINS MOTOR LINES, INC.,

Respondent.

SUPPLEMENTAL APPENDIX TO PETITION FOR PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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APPENDIX 4

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

SWIFT TEXTILES, INC., Plaintiff,	)	
vs.	)	CV 485-181
WATKINS MOTOR LINES, INC., Defendant.	)	

ORDER

Plaintiff brought this action to recover for damage caused by defendant's alleged negligence in handling a container of spinning equipment bound for LaGrange, Georgia. Before the Court is defendant's motion for summary judgment.

I. Background

Plaintiff Swift Textiles, Inc. ("Swift") is a Delaware corporation with its principal place of business in New York, New York. Swift maintains an office and place of doing business in LaGrange,

Georgia, and is engaged in the textile manufacturing business. Defendant Watkins Motor Lines, Inc. ("Watkins") is a Florida corporation with its principal place of business in Lakeland, Florida. Watkins maintains an office and place of doing business in Savannah, Georgia. Watkins is a motor common carrier, and is engaged in the trucking business. This Court has jurisdiction of this action pursuant to 28 U.S.C. Section 1332.

In 1981, Swift purchased spinning machinery from the Rieter Machine Works, Ltd. ("Rieter") in Switzerland. The spinning machinery was placed into ocean containers, shipped from Rieter's plant by rail to the port at Hamburg, Germany, and loaded aboard the vessel TFL ENTERPRISE. See Affidavit of Swift employee David Haskell, Sections 1-4.

The ocean bill of lading issued by TFL, Inc. shows Rieter as the exporter, D.J. Powers Co., Inc. of Savannah, Georgia ("Powers") as the cosignee, and Swift as the notify party. The port of discharge is listed on the ocean bill of Charleston, South Carolina, and the place of delivery is shown as Savannah, Georgia.

The containers arrived in Charleston and were shipped overland to Savannah by inland carrier under the ocean bill of lading.[1] Upon arrival in Savannah, the containers were stored temporarily at the yard of the Delta Trucking Company. See

1. The parties stipulated in an attachment to the Proposed Pretrial Order that "[t]he movement under the Ocean Bill terminated at the Port of Savannah and the movement from Savannah to LaGrange was under the Motor Carrier Bill of Lading." Stipulation of Facts, p. 3. Copies of the ocean bill and the domestic straight bill of lading are attached to the Stipulation of Facts as exhibits.

Affidavit of Watkins Vice President Kenneth Grider, Section 1. Shortly thereafter, the customs house broker and cosignee, Powers, retained Watkins[2] to transport the containers from Savannah to LaGrange.

The transit from Savannah to LaGrange was under a uniform domestic straight bill of lading dated May 20, 1981. "The Motor Carrier Bill of Lading under which the container moved from Savannah to LaGrange was prepared by D.J. Powers, Freight Forwarders, of Savannah, as agents for the plaintiff." See Stipulation of Facts, pp. 1-2. The bill of lading expressly certified that "the property in this receipt was imported in the TFL

2. Watkins Landspan, a division of Watkins Motor Lines, Inc., actually moved the freight. See Affidavit of Sharon E. Maloy, p.2.

ENTERPRISE." The bill also acknowledged that the shipment was "received subject to all the classifications and tariffs in effect on the date of the issue of this Bill of Lading," and listed Swift as the shipper and cosignee.

The bill of lading further provided in fine print that:

> ... It is mutually agreed, as to each carrier .. and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth ... (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment.
>
> Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns."

The parties have stipulated that Watkins had on file with the Interstate Commerce Commission ("ICC") in May, 1981, National Motor Freight Classification NMF 100-H ("Classification 100"). Section 2(b) of the contract terms and conditions of Classification 100 provides that suit must be brought within two years and one day of notice in writing from the carrier denying a claim for property damage. Watkins also had published and one file with the ICC Tariff ICC WWAT 701 ("Tariff W 701"). Tariff W 701 incorporated by reference Classification 100. See Tariff W 701 at p. 10. Copies of both documents are attached to the Stipulation of Facts. The only Watkins' classifications and tariffs in existence were those on file with the ICC. Watkins had none on file with the Georgia Public Service Commission ("PSC"). See

Stipulation of Facts, p. 1.

Watkins issued its freight bill to Swift dated May 26, 1981. See Exhibit "D" attached to the Stipulation of Facts. The freight bill shows that the containers were shipped under, and plaintiff billed according to, Tariff W 701.3

While enroute from Savannah to LaGrange on May 26, 1981, the container in question (No. TFLU4519596) slid partially off its chassis as the Watkins' driver negotiated a turn around the courthouse square in Greenville, Georgia, causing extensive

3. The rates and charges listed in Tariff W 701 apply to "containers having a prior or subsequent movement by water." See Tariff W 701, p. 13, attached to Stipulation of Facts.

damage to the spinning equipment stored therein.

Plaintiff submitted its written notice of claim for property damage by letter dated February 1, 1982. Defendant denied plaintiff's claim by a letter dated April 19, 1982. See Affidavit of Watkins' Vice President Kenneth Grider. Plaintiff filed this action on May 13, 1985.

Watkins now moves for summary judgment because Swift did not file suit within two years and one day after denial of the claim. In support of its argument, defendant cites the Carmack amendment, 49 U.S.C.

Section 11707(e),[4] the bill of lading between Swift and Watkins, and the applicable classifications and tariffs quoted, supra.

Defendant contends that this shipment was the continuation of foreign commerce; hence, the transport in question was under ICC

4. The portion of the Carmack amendment at issue provides, in pertinent part, that

> [a] carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section.

49 U.S.C. Section 17707(e). This section, however, is not a statute of limitations, but rather, a statutory determination of what is a reasonable period of limitations for a carrier to impose. Louisiana & Western R.R. Co. v. Gardiner, 273 U.S. 280, 284, 47 S.Ct. 386, 388, 71 L.Ed. 644 (1927); Westhemeco Ltd. v. New Hampshire Insurance Co., 484 F.Supp. 1158, 1161 (S.D.N.Y. 1980).

jurisdiction, and the classifications and tariffs "in effect" on the date of issuance and "applicable" to this shipment were those filed with the ICC and quoted, supra. These classifications and tariffs provide for a limitation period for filing suit, as allowed by the Carmack amendment, with which plaintiff has not complied. Therefore, plaintiff is bound by the terms of the bill of lading signed by its agent, its suit was untimely filed, and summary judgment for the defendant must be granted. Second, defendant contends that if the transit from Savannah to LaGrange is found to be intrastate, plaintiff is still barred under State law by the doctrine of incorporation by reference.

Plaintiff, seeking to avoid the limitation, argues that the transport of the container from Savannah to LaGrange

was intrastate. Swift contends that the classifications and tariffs "in effect" or "applicable" to this shipment should be those on file with the PSC because it was an intrastate shipment. Since it is undisputed that Watkins had no classifications or tariffs on file with the PSC, see Stipulation of Fact, p. 1, plaintiff asserts that Georgia's four year statute of limitations governs this action. See O.C.G.A. Section 9-3-32. Thus, Plaintiff's suit would not be barred. Furthermore, plaintiff contends that the Carmack amendment, which allows limitations periods such as the one in controversy here to be placed in bills of lading where transport is under ICC jurisdiction, does not apply to imports shipped under "through bills of lading." Finally, plaintiff asserts that

if the shipment was intrastate, there was no valid incorporation by reference.

II. Law and Analysis

A. Foreign or Intrastate Commerce?

The outcome of this case hinges upon whether the movement of the container from Savannah to LaGrange was a continuation of foreign commerce subject to ICC jurisdiction, or whether it was merely an intrastate journey.

Article 1, Section 8 of the Constitution grants Congress the power to regulate interstate and foreign commerce. Pursuant to this grant, Congress established the ICC, and vested with it, inter alia, the regulation of the transportation of passengers or property by motor carrier in interstate or foreign commerce:

SUBCHAPTER II - MOTOR CARRIER TRANSPORTATION

Section 10521. General Jurisdiction

(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation by motor carrier and the procurement of that transportation to the extent that passengers, property, or both, are transported by motor carrier -

(1) between a place in -

(A) a State and a place in another State;

(B) a State and another place in the same State through another State;

(C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;

(D) the United States and another place in the United States through a foreign county to the extent the transportation is in the United States; or

(E) the United States and a place in a foreign country to the extent the transportation is in the United States; and

(2) in a reservation under the exclusive jurisdiction of the United States or on a public highway

49 U.S.C. Section 10521 (emphasis added).

A carrier providing transportation subject to ICC jurisdiction is required to publish and file with the ICC appropriate tariffs. 49 U.S.C. Section 10762. The transportation of such freight without prior filing of tariffs with the ICC is prohibited. 49 U.S.C. Section 10761. Tariffs have the force of law, and both carriers and shippers alike are bound by provisions of such tariffs. Farley Terminal Co. v. Atchison, Topeka & Santa Fe Ry. Co., 522 F.2d 1095 (9th Cir.), cert. denied, 423 U.S. 996 (1975).

A determination of what constitutes a foreign commerce cannot be made by mechanical application of the statute, but must take into account the totality of

circumstances surrounding the transit of the goods. The following quotation from Powell v. United States summarizes quite well some of the factors which should be considered:

> ...(T)he nature of the shipment is not dependent upon the question when or to whom the title passes. Pennsylvania R. Co. v. Clark Bros. Coal Mining Co., 238 U.S. 456, 465-66 ... It is determined by the essential character of the commerce. Baltimore & Ohio S.W.R. Co. v. Settle, 260 U.S. 166, 170 ... It is not affected by the fact that the transaction is initiated or completed under a local bill of lading which is wholly intrastate, Ohio R.R. Commission v. Worthington, 225 U.S. 101, 108-110; Texas & New Orleans R. Co. v. Sabine Tram Co., 227 U.S. 111; Hughes Bros. Timber Co. v. Minnesota, 272 U.S. 469, ... or by the fact that there may be a detention before or after the shipment on the local bill of lading. Carson Petroleum Co. v. Vial, 279 U.S. 95 (1928).

Powell v. United States, 112 F.2d 764, 766 (4th Cir. 1949); see also Farmers Union Coop. Mktg. Ass'n. v. State Corp. Commission of Kansas, 302 F. Supp. 778,

783 (D.Kan. 1969).

Another court has listed the following as factors to be considered:

> (1) the mere form of a bill of lading or contract is not decisive, Atlantic Coast Line Railroad Co. v. Standard Oil Co. of Ky., 275 U.S. 257 (1927); (2) the reshipment of imported goods within the same state does not necessarily establish a continuity of movement placing the goods in foreign commerce. Id.; (3) the nature of the shipment is not dependent upon the question when or to whom title passes, Pennsylvania Railway Co. v. Clark Bros. Coal Min. Co., 238 U.S. 456 (1914); (4) that the shipment involved is wholly on an intrastate bill of lading is not conclusive, Railroad Commission of Ohio v. Worthington, 225 U.S. 101 (1911); (5) nor is continuity in movement terminated by the transfer of goods from one mode of transportation to another. Dallum v. Farmers Cooperative Trucking Association, 46 F.Supp. 785 (D. Minn. 1942)
>
> The more general statements appear with respect to the controlling factors. Thus, (1) the nature of the shipment "is determined by the essential character of the commerce", United States v. Erie Railroad Co., 280 U.S. 98; (2) "It is the intention formed prior to shipment, pursuant to which property

> is carried to a selected destination by a continuous or unified movement, which fixes its essential character." Great Northern Railway Co. v. Thompson, 222 F. Supp. 573, 582 (D.C.N.D. 1963).

North Carolina Utilities Commission v. United States, 253 F.Supp. 930, 934 (E.D.N.C. 1966).

The North Carolina Utilities Commission decision is instructive here. In this case, the state agency brought an action against the United States seeking to annul a decision of the ICC which held that certain shipments by truck of imported iron and steel products from the port of Wilmington, North Carolina to other cities in North Carolina were in foreign commerce, and hence subject to regulation by the ICC. Id. at 932. Plaintiff contended that this transportation of goods from Wilmington to inland North Carolina cities was

intrastate commerce subject to its control, not that of the ICC. Id. at 933.

The goods involved were nails, barbed wire, pipe, etc., manufactured in Belgium and ordered by Lowe's companies, Inc. ("Lowe's"), the parent company of several separately incorporated stores, from the foreign producers. Id. at 932-33. After discussing the facts and the factors quoted, supra, the Court stated:

> Bared to the essentials, the facts in the principal case disclose that Lowe's inventories the needs of its several inland stores; it sends an order, based on the aggregate needs, to a Belgian producer; six months later the goods arrive at Wilmington, whence they are shipped inland [under new bills of lading] to the several stores pursuant to a rapid re-examination of their individual needs. The net effect is that goods have come from Belgium to the several inland cities pursuant to the intent formed by Lowe's six months earlier to import foreign goods for distribution through its outlets. No distribution or storage facility is owned by Lowe's in Wilmington. The goods while there are in a state warehouse, usually for

> not more than three days; they are imported, not by a distributor with his business located in Wilmington, but by Lowe's with its business located in eight North Carolina cities. No tax is ever paid on the goods as they rest in Wilmington. Nor is the ultimate purpose of Lowe's subserved upon their arrival there. The obvious and dominant intent of Lowe's remains the same throughout the transaction - to obtain goods from Belgium destined for delivery at its eight inland stores in North Carolina for sale to the public. Manifestly, the docks at Wilmington are not the intended destination. There is no purpose to store the cargo there to effect the efficient distribution to Lowe's customers. Wilmington, therefore, is but a mere link in the chain of foreign commerce that continues until the goods have arrived at their intended destination, that is, at the individual Lowe's stores.

Id. at 936. With this finding made, the court affirmed the ICC's ruling that the inland transportation involved in the case was but a continuation of foreign commerce. Id. at 937.

With this case in mind,[5] the Court turns to the facts of the instant case, and holds that the shipment from Savannah to LaGrange was the continuation of foreign commerce. Plaintiff ordered the equipment which was damaged in the container from a foreign manufacturer. Plaintiff intended for the machinery to be immediately shipped to its factory upon arrival in Savannah via Charleston. The goods remained in Savannah only long enough to clear customs and for Powers to arrange for a common carrier to transport them to LaGrange.

5. Although the North Carolina Utilities case was a review of an administrative action, its analysis and application of the factors used to delineate intrastate commerce from that which is the continuation of foreign commerce is helpful.

The docks at Savannah were not the intended destination of these goods. The ocean bill of lading lists Swift as the "notify party." The separate domestic straight bill of lading shows that he goods had been "imported." Clearly, Savannah was but a mere link in the chain of foreign commerce that continued until the goods arrived at their intended destination, LaGrange. Although the shipment from Savannah to LaGrange did not cross state lines, the essential character of the shipment shows that the inland journey of these goods was the continuation of foreign commerce.

Plaintiff relies primarily upon two decisions to support its argument that the transit from Savannah to LaGrange was intrastate. The first case is Gulf, Colorado and Santa Fe Railway v. Texas, 204 U.S. 403 (1907). In this case, Hardin

Grain Company of Missouri contracted to sell corn to Saylor & Burnett in Goldwaithe, Texas. Hardin, not possessing sufficient corn to fill the order, contracted with the Harroun Commission of Missouri to supply the necessary corn. Harroun, pursuant to Hardin's instructions, shipped the corn by rail from South Dakota to Texarkana, Texas. This shipment was governed by a bill of lading showing Texarkana as the place of delivery. The defendant, Gulf, Colorado and Santa Fe Railway, was not a party to this bill of lading. Five days later, Harroun, action for Hardin, reshipped the corn, via rail, from Texarkana to Goldwaithe under a separate bill of lading.

The defendant, a railroad which had charged the higher interstate rate for its portion of the Texarkana to Goldwaithe

shipment, contended that the temporary interruption of the transit did not change the nature of the shipment, which remained interstate, since the fact that one of the carriers in the route transports wholly within the state of destination is not material. Id. at 408. The Court, however, pointed out that the first contract of carriage was from South Dakota to Texarkana, Texas, and was, of course, an interstate shipment; but

> [W]hen the Hardin Company accepted the corn at Texarkana the transportation contracted for ended. The carrier was under no further obligations to carry it further. It transferred the corn, in obedience to the demands of the owner, to the Texas and Pacific Railway Company, to be delivered by it, under its contract with such owner. Whatever obligations may rest upon the carrier at the terminus of its transportation to deliver to some further carrier, in obedience to the instructions of the owner, it is acting not as carrier but simply as a forwarder. No new arrangement having been made for transportation, the corn was delivered to the Hardin Company at

> Texarkana. Whatever may have been the thought or purpose of the Hardin Company in respect to the further disposition of the corn was a matter immaterial so far as the completed transportation was concerned.
>
> .....
>
> It must be further remembered that no bill of lading was issued from Texarkana to Goldwaithe until after the arrival of the corn at Texarkana, the completion of the first contract for transportation, and the acceptance and payment by the Hardin Company.

Id. at 412-13. The court held the shipment between Texarkana and Goldwaithe to be intrastate.

Plaintiff contends that the Gulf case controls here due to the existence of the two separate bills of lading, one governing out-of-state transportation, the other governing in-state transportation. Under Gulf, plaintiff asserts that the Savannah to LaGrange shipment was intrastate, citing to the following quotation as support for its argument:

"[T]he character of a shipment, whether local or interstate may depend on the contract of shipment." Id. at 412.

Gulf is not controlling here. First, this is an old case which predates the more modern cases which have enunciated the tests to be employed in determining the nature of commerce. Second, it has already been stated that the form of the bill of lading or the fact that part of the shipment is wholly intrastate on a separate bill of lading is not conclusive. See North Carolina Utilities, supra, and cases cited. Third, the corn in the Gulf case reached its destination in Texarkana, Texas and could have remained, or moved intrastate or interstate. By contrast, all shipping documents in the instant case show that Savannah was not the final destination, but only a mere point in the route of these imported goods to the

ultimate purchaser, Swift.

The second decision advanced by plaintiff is Empire Aluminum Corp. v. S.S. Korendijk, 391 F. Supp. 402 (S.D.Ga. 1973). Plaintiff asserts that this case supports its position that the transport of the container from Savannah to LaGrange was intrastate. The Court disagrees. Judge Lawrence was dealing in that case with the different presumptive effect to be given bills of lading issued by ocean carriers and motor carriers, not whether transport of freight from Savannah to an inland Georgia city was intrastate or foreign commerce. Id. at 411.

B. Applicability of the Contractual Limitation Period

Plaintiff contends that the limitation period in bills of lading

permitted by the Carmack amendment cannot apply to imports shipped pursuant to a through bill of lading.[6] Plaintiff cites and argues by analogy the case of Reider v. Thompson, 339 U.S. 113 (1950).

In Reider the plaintiff brought an action against the railroad for damages to a shipment of wool. The wool was shipped from Argentina to New Orleans under an ocean bill of lading, and then traveled under a separate domestic bill of lading from there to Boston on the respondent railroad. The railroad filed a motion

6. "[A] through bill of lading is one with the delivery destination of the goods noted thereon, although transportation of the goods may extend over the lines of connecting carriers." Kenny's Auto Parts v. Baka, 478 F.Supp. 461, 462 n.1 (E.D.Pa. 1979). Plaintiff asserts, and defendant does not seem to disagree, that the ocean bill from Hamburg to Savannah via Charleston was a through bill of lading. There was not, however, a through bill of lading from Hamburg to LaGrange.

to dismiss on the ground that the complaint failed to state a claim under the Carmack amendment. The lower courts had dismissed the action, but the Supreme Court reversed, finding the shipment to Boston subject to the Carmack amendment since it was separate and distinct from shipment under the foreign bill. Id. at 117. The Court noted that there was no through bill of lading from Buenos Aires to Boston, and stated: "The test is not where the shipment originated, but where the obligation of the carrier as receiving carrier originated." Id.

Applying this case to the facts in the case sub judice, plaintiff in essence asserts that the Reider Court found the New Orleans to Boston bill of lading to be within the Carmack amendment because it was separate from the ocean bill, and because the shipment crossed state lines.

Under this analysis, plaintiff contends that the movement of the container from Savannah to LaGrange is not subject to the Carmack amendment because it did not cross state lines, just as a shipment from New Orleans to Baton Rouge would have been outside the Carmack amendment under the Reider facts.

Plaintiff's argument is unpersuasive. It assumes that an interstate movement is required to bring a shipment under ICC jurisdiction and the Carmack amendment. As outlined in Part II A of this Order, however, crossing state lines is not necessary if the movement of goods is a continuation of foreign commerce. The fact that the transport of these goods was the continuation of foreign commerce brings it under ICC jurisdiction and the Carmack amendment, even if state lines were not crossed.

C. Incorporation by Reference

Because the Court finds that the movement of the container from Savannah to LaGrange was the continuation of foreign commerce, it is unnecessary to consider defendant's secondary argument, i.e., if there was an intrastate shipment, the applicable classifications and tariffs were incorporated by reference into the bill of lading by state contract law. See Consolidated Freightways v. Syncroflo, 164 Ga. App. 275 (1982).

III. Conclusion

In summary, the Court has determined that the transportation of the container from Savannah to LaGrange was a continuation of foreign commerce and not an intrastate journey. As stated earlier,

the bill of lading signed by plaintiff's agent acknowledged that the shipment was "received subject to all the classifications and tariffs in effect" on the date of issuance of the bill. Additionally, the agent bound its principal to "all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth ... (2) in the applicable motor carrier classification or tariff" when it signed the bill of lading.

Because this shipment was one under ICC jurisdiction, it naturally follows that the classifications and tariffs "in effect" and applicable were those Watkins had on file with the ICC. The classifications and tariffs, incorporated into the bill of lading signed by plaintiff's agent, require that suit "must be brought within two years and one day" after the plaintiff receives notice in

writing from the carrier denying its claim. As this time limitation was not met by plaintiff, defendant's motion for summary judgment must be GRANTED.

SO ORDERED, this 18th day of December, 1985.

B. Avant Edenfield
Judge, United States Court
Southern District of
Georgia

APPENDIX 5

CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

SWIFT TEXTILES, INC.,

Petitioner,

v.

WATKINS MOTOR LINES, INC.,

Respondent.

CERTIFICATE PURSUANT TO RULE 28.1
OF THE U.S. SUPREME COURT RULES

In accordance with Supreme Court Rule 28.1, Petitioner Swift Textiles, Inc. certifies that the following is a complete list of all parent companies, subsidiaries and affiliates.

Swift Textiles, Inc. is a wholly owned subsidiary of Dominion Textile (USA) Inc., 1040 Avenue of the Americas, New York, New York 10018. Swift Textiles, Inc. has no subsidiaries or affiliates.

APPENDIX 6

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1986

SWIFT TEXTILES, INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Eleventh Circuit
	)	Case No. 85-9005
WATKINS MOTOR LINES,	)	
	)	
Respondent.	)	

PROOF OF FILING AND SERVICE

I, the undersigned ALAN S. GAYNOR, attorney of record for the Petitioner and a member of the Bar of the Supreme Court of the United States, deposes and says that on the 10th day of February, 1987, I filed 40 copies of the foregoing SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI to the Supreme Court of the United States with the Clerk of the Supreme Court of the United States and I served three copies of this SUPPLEMENTAL APPENDIX TO PETITION FOR

WRIT OF CERTIORARI to the Supreme Court of the United States on John B. Miller, attorney for Respondent, whose address is Miller, Simpson & Tatum, Post Office Box 1567, Savannah, Georgia 31498, who are all the parties required to be served, by causing to be placed these copies of said SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI in an authorized depository for mail at a United States Post Office in a properly addressed envelope with sufficient prepaid postage thereon to insure First Class Certified Mail delivery within the time allowed for such filing.

THIS 6 day of February, 1987.

ALAN S. GAYNOR
Attorney for
Petitioner